1941. K File No. O-Sales Tax/41

Legal DEPARTMENT

A BRANCH

Std 7/16

Subject:—

Opinions under the

P5E

Bombay Sales Tax

Act; 1939

File No. O-Sales - Tax/41

Std. Sectt. Slip 24 B c.

150-A

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mm.

In paragraph 3 of the A. L. A.'s opinion No. 6183, dated the 8th July 1940 it is stated, "The sales Tax can be levied under rule 13(2) of the Bombay Motor spirit Sales Tax Rules, 1939 read with section 3(1) of the Bombay Sales Tax Act, 1939 in respect of all dost (evaporated etc.) stocks of motor spirit, provided the stock holders concerned are not (1) themselves manufacturers, producers or importers, or (2) direct purchasers from manufacturers, producers or importers." The direct purchasers from manufacturers, producers or importers may be either wholesale traders or retail traders or both. If they are wholesale traders as defined in section 2(9) of the Act, they would not be liable to pay the tax on their own wholesale sales but will have to pay the tax on the amount of the motor spirit consumed without resale (see rule 13 (2) of the Bombay Motor Sales Tax Rules, 1939). If the direct purchasers from manufacturers, producers, or importers are retail traders as defined in section 2(6) there is no reason why rule 13(1) should not apply. Under the Bombay Motor Spirit Sales Tax Rules, both a retail trader and a wholesale trader are required to take a license and to submit accounts in Forms C and D in respect of wholesale sales and retail sales respectively. From such statements it would not be difficult to assess the actual retail sales even if the direct purchasers are both wholesale and retail traders. It appears from the Collector's letter at page 4 ante that allretail licensees are direct purchasers. It is not on their purchases that the sales tax would be leviable; but it would be leviable on the retail sales by such direct purchasers. It is true that no tax at all can be legally levied on motor spirit that has infact evaporated and has therefore never been sold at all; but as it is difficult

to ascertain and determine exactly the amount of evaporation, Government has by Circular No. 1052/39/29728, dated the 23rd August 1939 specified the percentage of evaporation that would be readily accepted as correct. The percentages fixed by these executive orders of Government are merely for the sake of administrative convenience and ought not to be construed as authorising any levy of the sales tax on motor spirit which has not been sold at all but has as a matter of fact evaporated before it could be sold at a taxable stage between its manufacture, production or import and its consumption. Consequently the amount beyond the percentages specified in the Government Resolutions in question would only be presumed to be either consumed or sold and the value of it would be assessed to the sales tax as a matter of administrative expediency. It appears therefore that the tax hitherto levied in respect of the evaporated stock beyond the prescribed percentage, as reported by the Collector from the retail sellers is prima facie not unjustified even though such sellers are themselves direct purchasers from manufacturers, producers, or importers. The view taken inthe Revenue Department office note at Page 3 ante appears to be correct.

sd/- 22/2

Remembrancer of Legal Affairs.

U. R. to R. ", No. 1715, dated the 25th February, 1941.

MRR.
14/4

G. I. No. 710.
10/3/41.

Submitted.

It appears that one Mr. Dalvi who is a retail trader in motor spirit has not been submitting returns of motor spirit sold or consumed by him within the period prescribed by rule 14 of the Bombay Motor Spirit Sales Tax Rules, 1939. He was twice warned for this but it appears that the warning has produced no effect on him andthe question is whether he can be successfully prosecuted for not submitting the returns in time.

2. Section 10 of the Bombay Sales Tax Act, 1939, requires every trader carrying on business in the sale or purchase of any kind of goods specified in the Schedule to keep and maintain accounts in the form prescribed of the value of goods(manufactured, produced or imported) sold or purchased by him and to submit to the officer authorised in that behalf by the Collector statements in such form and at such period as may be prescribed. Section 11 provides that if any trader liable under section 10 to keep accounts or to submit statements fails to keep or submit the same in the manner and at the period prescribed, he shall on conviction be punishable with fine. Rule 14 of the Bombay Motor Spirit Tax Rules, 1939 has prescribed the period within which every retail trader shall submit areturn of all motor spirit sold or consumed by him during the month. The period prescribed under the rule is thirty days of the close of each calendar month. It appears that Mr. Dalvi is aretail trader in motor spirit, a kind of goods specified in the Schedule to the Act. He can therefore bound under the provisions referred to above to submit returns of all

motor spirit sold or consumed by him during the month within thirty days of the close of each calendar month. By his failure to submit the returns within the period prescribed Mr. Bakre has committed an offence under section 11 of the Act and has thus rendered himself liable to prosecution.

sd/-
22/2

S. A. S.

The papers may be seen and returned.

sd/-
25/2

D. S.

sd/-
26/2

R L A

sd/-
27/2

U. R. to R. D. No. 1889 dated the 3rd March, 1941.

Madhav Raokadam.